

Report of the Working Group on a Definition of Antisemitism

Description of Paper

Report of the Working Group on a Definition of Antisemitism, established by Academic Board at the meeting of 10 February 2021 [AB Minute 25, 10.02.21].

Action Required of Academic Board

To discuss with a view to advising Council.

Prior Consideration

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Author

Working Group on a Definition of Antisemitism

Status

Open

Report on the Definition of Antisemitism
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University College London

Academic Board Working Group on a Definition of Antisemitism

Date of Report:

2 Context and Background to this Report

1. In recent years, there has been a widespread tendency for institutions of higher education to adopt the IHRA definition of antisemitism. The UCL Academic Board held an inconclusive deliberation on the advantages and disadvantages of the IHRA working definition of antisemitism as a tool to combat antisemitism on campus. That debate was followed by two UCL Council meetings in which the IHRA definition was discussed (13 March 2019) and then adopted (21 November 2019). The views of Academic Board did not figure prominently, if at all, in that decision.

2.1 The Report of the Working Group on Racism and Prejudice

2. On 12 December 2019, the UCL Academic Board voted to establish a predecessor group to the present one, the Working Group on Racism and Prejudice (WGRP). Its role was to consider inter alia whether UCL should ultimately adopt or retain any working definition of antisemitism. The WGRP was established to investigate the proposed adoption of the IHRA definition of antisemitism and its implications for UCL.
3. The membership of the WGRP consisted of experts nominated by the Faculty of Laws,

that would complement the instruments for reporting and investigating antisemitic and racist harassment.³

5. The Report of the WGRP included a thirty-page discussion of the suitability of the IHRA definition and whether there is a need for any alternative definition. It concluded that due to its shortcomings as a definition, as well as the potential for infringement of academic freedom and freedom of speech, the IHRA working definition was an inappropriate tool for addressing this issue on a university campus. It recommended with one dissenting vote that AB should advise Council to retract the definition, or to replace it with an alternative more fit for purpose.
6. The report of the WGRP was discussed by AB on 16 December 2020 and 10 February 2021. AB resolved on the latter date, with an overwhelming majority, to endorse the preference to recommend to UCL Council to either (A) retain the IHRA working definition of antisemitism, (B) retain and amend this definition, (C) replace the IHRA working definition, or (D) retract the IHRA definition and return to the Equality Act as the basis of assessing cases of antisemitic harassment. A strong majority endorsed the recommendation to replace the adoption of the IHRA working definition of antisemitism (C), followed by support for options D, B, and A.⁴

2.2 The Present Working Group and Working Methods

7. Following the outcome of the vote taken in the meeting of AB on 10 February 2021, a Working Group on a Definition of Antisemitism was established and has met regularly since April 2021.
8. As clarified in its Terms of

9. In an email to Academic Board on 13 April 2021, the Provost noted that he would expect that the Working Group would consult widely on their proposals ahead of submission to Council.
10. Should AB adopt any of the recommended definitions, it will do so with a view to advising UCL Council to adopt it for use in the university as an alternative to the IHRA definition.
11. The Working Group has consulted approximately 14 times since that time. During the course of its work, it consulted on numerous occasions with the Provost and with members of the Governance Committee of Academic Board.

3 The Consultation Exercise

3.1 Aims of the Consultation

12. The Working Group resolved that it would issue a consultation paper. It also decided however that it would consult after having advanced discussions internally so that it could share within the consultation document the analysis and some of the views then emerging within the Group, yet do so prior to coming to any firm views. It was also resolved that the function of the consultation was to solicit a variety of views and not to weight responses by merely aggregating preferences for one option over others.
13. The Working Group published an extensive consultation document on 13 October 2021 and the consultation period closed on 15 November. Conducted entirely online, it was the first consultation of its kind in the University. With the agreement of the Provost, and

Jewish prejudice, how to recognize it, and how to combat it. An educative definition may help in identifying instances of antisemitism that fall short of causing a level of harm or offence that makes them liable to some form of disciplinary action, but which still call for a response of some kind by the university or its relevant communities.

29. A proscriptive definition, by contrast, would seek to identify expressions of antisemitism in respect of which the university should seek to take disciplinary action, block an event, antisemitic acts (including expressions of antisemitic beliefs) is useful in clarifying, precisely and in advance, likely triggers for complaint and disciplinary action. As will be seen in Section 4.4 below, a range of behaviours may trigger currently effective

robust processes to protect freedom of speech and academic freedom, which it is legally obligated to uphold. Nor would the definition alter the University's approach to and managing external speakers; so long as scheduled events can be held safely and within the law, these events should proceed.

34. However, it should also be noted that the Provost expressed the view that any adopted definition of antisemitism, even one that is officially educative in purpose, may end up being relevant in disciplinary and complaints proceedings at UCL, for complaints that involve antisemitism – an observation shared by several respondents to the consultation (e.g., “we therefore think we have to assume that any adopted definition will be used as

the requirements of unfair dismissal legislation, academic freedom duties (see above), the Human Rights Act 1998 and any other applicable contractual, legislative or common law norms. Staff may be issued with an informal warning, a formal oral warning, a written warning, a final written warning or dismissal.

50. In the case of academic staff covered by Statute 18, if dismissal for gross misconduct is a possible outcome, a Tribunal will be convened under paragraphs 14-18 of Statute 18. The procedure in Statute 18 gives special protection to academic freedom and it provides for various procedural rights. In all other cases the standard procedure is used, with a single senior academic chair (Dean or Vice-Provost). Staff not covered by Statute 18 who are subject to a gross misconduct allegation also face a three-person panel. All formal sanctions are subject to a right of appeal with the potential for a lesser outcome or revised findings of fact.

51. Non-academic misconduct by students is addressed under the Student Disciplinary Code and Procedure²⁸ which is established under UCL Statute 13.²⁹ A non-exhaustive list of examples of misconduct is given, including but not limited to the following examples:

- < ³YLROHQW LQG HFHQW GLVRUGHUO\ WKUHDWHQ ODQJXDJH´
- < ³VH[XDO URDFKLDU RILUQG RI KDUDVVPHQW´
- < ³EUHDFK RI WKH SURYLVLQRV RI 8&/¶V &RGH RI 3UDI

would without amendment be compatible with the Higher Education (Freedom of Speech) Bill, when it becomes enacted into law.³¹

53. Off-campus behaviour by students, including online activity, may be subject to internal disciplinary procedures if it has a direct connection with or impact on the university or members of the university. Discipline-specific professional conduct procedures may also apply.

54. Staff and students can make anonymous disclosures of potential breaches of these policies through the UCL Report and Support system.³² Both may also make an informal complaint against other students or staff, by notifying a range of persons (from manager or personal tutor to trade union representative). Students may also lodge a formal complaint against either other students and staff through Report and Support or via the Student Casework Team; and staff may do the same following the Staff Grievance Policy.³³

55. All told, where antisemitism is found to rise to the level of harassment, bullying, discrimination, or abuse of power it may be investigated under disciplinary procedures and result in a warning, or even dismissal or expulsion. In an extreme case, it may result in a referral to the police. To the extent, therefore, that any definition of antisemitism is used to interpret these categories (see Section 4.3 above), it is essential that it does not inadvertently censor legitimate

5.1 Helen Fein

57. Professor Helen Fein is a historical sociologist whose work has focused on genocide and human rights, and was the founder and first president of the International Association of Genocide Scholars. Her definition of antisemitism, located in her book *The Persisting Question: Sociological Perspectives and Social Contexts of Modern Antisemitism* (De Gruyter, 2012) is as follows:

A persisting latent structure of hostile beliefs towards Jews as a collective manifested in individuals as attitudes, and in culture as myth, ideology, folklore and imagery, and in actions ±social or legal discrimination, political mobilisation against the Jews, and collective or state violence ± which results in and/or is designed to distance, displace, or destroy Jews as Jews.

58. The advantages of this definition are: (1) that it addresses both beliefs/ideologies and political action and violence; (2) that it addresses realms of the sociopolitical and folkloric/mythological; (3) that it

specificity of antisemitism.³⁷ The Working Group recognises that antisemitism has its own specific character and history, but that is true of all forms of racism and

expressed, the Working Group recommends that the issue be clarified by way of an accompanying statement issued alongside any adoption of the definition.

- < Second, some have expressed the view that in the JDA ¶ 4 enumeration of examples of expression that presumptively are or are not antisemitic, there is too much emphasis on examples of things that are not antisemitic. While there are an equal number of examples of each, the nub of the complaint is that there is a larger number of words devoted to explaining the latter. The perception is that the definition is more concerned with protecting speech that is hostile towards Israel than with rooting out antisemitism. The majority of the Working Group does not agree with the objection. It is well-known that the conflation of antisemitism with criticism of the state of Israel is a principal area of difficulty created by the IHRA working definition. Seven of the eleven examples of antisemitism in the IHRA definition relate to criticism of the state of Israel. Thus, that issue has become the most acute matter calling for the most careful clarification.
- < A third criticism of the definition is that the IHRA definition is already widely adopted, and advocating the JDA is somehow conspicuous in its attempt to diverge from this emerging norm. However, the problems with the IHRA definition were surveyed comprehensively in the Report of the Working Group on Racism and Prejudice. We agree with the AJS Taskforce Statement that uni Y H U V L W L H r e s i s t c a m p a i g n s μ S U H V V X U L Q J W K H P W R F R G L I \ ^ { 3 8 } R Q H S D U W L F X O D U G H I L Q L W

69. The JDA definition benefits from having commenced with the same problem as this : R U N L Q J * U R X S L V W D V N H G W R D Q V Z H I U w a s d e v e l o p e d b y a G L Q L W group of scholars in the fields of Holocaust history, Jewish studies, and Middle East studies to meet what has become a growing challenge: providing clear guidance to L G H Q W L I \ D Q G I L J K W D Q W L V H P L W L V P W h i l e o f f e r i n g u s t h e b e s t b e s t s i n g l e d e f i n i t i o n , w e n e v e r t h e l e s s c o n c l u d e t h a t i t i s n o t n e c e s s a r y f o r i t t o s e r v e a s

presumptively is / is not antisemitic, a bespoke definition could select examples that are of particular significance to the UCL community, e.g., examples aimed at illustrating ZKHUH ³WKH OLQH´ LV IRU VWXGHQW VRFLHW\ RU VWDIIFUL construed as antisemitic, or examples that navigate the crafting of syllabi and teaching material where antisemitism is a distinct object of scholarly inquiry.

72. One major downside of a bespoke definition is that existing definitions plausibly have a significant degree of cohesion and theoretical integrity and grow out of extensive multi-year consultation with a broad range of experts and stakeholders. A minority of respondents to the consultation expressed support for such an approach: As great as the challenge of drafting a bespoke definition is, it seems worth attempting, notwithstanding uncertainty whether it will turn out to be achievable. ¶Among those respondents to the consultation in favour of adopting the IHRA working definition of antisemitism, this work has already been accomplished through this definition, which also represented the view of an assumed Jewish community at UCL ±therefore, for these respondents a bespoke definition was as superfluous as alternatives to the IHRA definition. Also, many warned of pursuing a bespoke definition: ¶Please do not do this. I think a lot of time will be wasted reinventing the wheel, presumably without the personnel or time resources to do it properly. ¶

73. Ultimately, the Working Group concluded that to combine elements of different definitions may be to create something that has internal tensions, either in its background theoretical understanding of antisemitism, or in the implicit behavioural guidance that it would be offering to members of the UCL community. Seeking to avoid these tensions could inadvertently drag out the UCL process for selecting a discrete and readily available educational definition for university use.

74. The Working Group does not recommend that UCL pursue a bespoke option.

5.5 A Range of Definitions

75. Most Working Group members have come to the view that no single definition is ideal for use in a university environment, and that pressure to adopt a single one should be resisted. This is for a number of reasons, several of which are outlined in the AJS Taskforce Statement of December 2021.³⁹ One is that a university should be recognised

6.1 Our Reasons

82.

recommended set, which would serve a manifestly educative and not proscriptive role, is a materially different proposition than which was previously considered and objected to strenuously by Academic Board.

92. On the substance of the issue, we concluded that the rationale for recognising multiple definitions could not easily service an argument for the total exclusion of the IHRA definition. This was above all when the accompanying definitions to a very large extent addressed its perceived shortcomings. Furthermore, if the function of the definitions is educative, then the variation of emphasis among the different definitions may even foster useful discussions. For instance, it could prompt interested parties to look into whether certain criticisms of Zionism or of the state of Israel do amount to coded antisemitism; or by contrast it could help explore whether the concept of antisemitism is being misused to shelter persons or institutions from legitimate criticism or accountability under international law. Also of significance is that there is a substantial community of persons at UCL for whom the recognition of the IHRA in some form is important.

93. Nevertheless, there are risks. There would be some inconsistency between the definitions, e.g. where things cited as examples of antisemitism in the IHRA definition are materially qualified or contradicted in the JDA and Nexus documents. Regarding these tensions, we can only state our own view that no definition should be of any sort and so these tensions will ultimately trigger further discussion. They do not amount to infirmities in punitive or formal proceedings or decisions relating to antisemitism.

6.4 A Proposed Resolution

94. After consulting with the Provost and members of the Governance Committee of Academic Board on the draft final report, the Working Group was prompted to consider framing a resolution or recommendation for action.

